

**PreciseTarget, Inc.**

**Terms of Service**

**Last Updated:** June 12, 2023

THESE TERMS OF SERVICE DESCRIBES THE RELATIONSHIP BETWEEN PRECISETARGET, INC. (“**PRECISETARGET**”) AND THE INDIVIDUAL OR ENTITY USING THE SERVICES (“**CUSTOMER**”).

THESE TERMS OF SERVICE, TOGETHER WITH THE ORDER FORM(S) THAT REFERENCE THESE TERMS OF SERVICE (COLLECTIVELY, THE “**AGREEMENT**”) CONSTITUTE A LEGALLY BINDING AGREEMENT GOVERNING THE TERMS AND CONDITIONS PURSUANT TO WHICH CUSTOMER MAY ACCESS AND USE THE SERVICES. BY CLICKING “I AGREE” OR ACCESSING OR USING THE SERVICES, CUSTOMER AGREES TO BE BOUND BY AND BECOME A PARTY TO THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CUSTOMER MUST NOT USE OR ACCESS THE SERVICES. CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT PERSONALLY (IF A NATURAL PERSON), OR ON BEHALF OF THE ENTITY ENTERING INTO THIS AGREEMENT, AND TO BIND THAT ENTITY. IF THE PARTIES HAVE PREVIOUSLY ENTERED INTO A WRITTEN AND PEN-SIGNED AGREEMENT REGARDING THE SUBJECT MATTER HEREOF, THIS AGREEMENT WILL SUPERSEDE THAT AGREEMENT TO THE EXTENT OF ANY CONFLICT.

PLEASE NOTE THAT THIS AGREEMENT IS SUBJECT TO CHANGE BY PRECISETARGET IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, PreciseTarget will make a new copy of this Agreement available within, or through, the Services. We will also update the “Last Updated” date at the top of this Agreement. If we make any material changes, and you have registered to use the Services, we will also send an e-mail to Customer at the last e-mail address provided to us. Any changes to this Agreement will be effective thirty (30) days after posting notice of such changes through the Services. If Customer does not agree to any change(s) after receiving a notice of such change(s), Customer shall stop using the Services. Otherwise, Customer’s continued use of the Services constitutes Customer’s acceptance of such change(s). PLEASE REGULARLY CHECK THIS AGREEMENT TO VIEW THE THEN-CURRENT TERMS.

**1. DEFINITIONS.** Capitalized terms shall have the meanings set forth in this section, or in the section where they are first used.

**1.1 “Access Protocols”** means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer or any Authorized Users to access the Services.

**1.2 “Authorized User”** means any of Customer’s employees, agents, and independent contractors who are authorized to access the Services pursuant to Customer’s rights under this Agreement.

**1.3 “Customer Data”** means any content provided or submitted by, or on behalf of, Customer or its Authorized Users for use with the Services.

**1.4 “Documentation”** means any standard end-user technical documentation, specifications, materials and other information PreciseTarget may make available electronically.

**1.5 “Intellectual Property Rights”** means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

**1.6 “Order Form”** means any online or written form or other communication provided by PreciseTarget evidencing Customer’s subscription for the Services.

**1.7 “Services”** means PreciseTarget’s services designed to assist with the acquisition, engagement and reactivation of customers, including any services made generally available and subscribed by Customer in an Order Form.

## 2. PROVISION OF SERVICES

**2.1 Access.** Subject to Customer's payment of the Fees (as defined below), PreciseTarget will provide Customer with access to the Services. On or as soon as reasonably practicable after the execution of the Order Form and acceptance of this Agreement, PreciseTarget shall deliver to Customer either: (i) the necessary passwords, security protocols and policies and network links or connections and Access Protocols; or (ii) the purchased data to the Customer's requested destination, to allow Customer and its Authorized Users to access the Services in accordance with the Access Protocols.

**2.2 Support Services.** Subject to the terms and conditions of this Agreement, PreciseTarget will exercise commercially reasonable efforts to (a) provide support for your use of the Services, and (b) keep the Services operational and available to you, in each case in accordance with its standard policies and procedures. Customer acknowledges that Customer's access to and use of the Services may be suspended for the duration of any scheduled or unscheduled downtime or unavailability of any portion or all of the Services for any reason, including as a result of power outages, system failures or other interruptions, or any other acts, omissions or failures on the part of PreciseTarget.

**2.3 Hosting.** PreciseTarget shall use commercially reasonable efforts to host and make available the Services, provided that nothing herein shall be construed to require PreciseTarget to provide for, or bear any responsibility with respect to any telecommunications or computer network hardware required by Customer or any Authorized User to provide access from the Internet to the Services.

**2.4 Third-Party Services.** Customer acknowledges and agrees that certain features and functions of the Services are made available by third parties that control such features and functions ("**Third-Party Providers**"), and that the access to and use of such features and functions ("**Third-Party Services**") is solely determined by the relevant Third Party Providers. PreciseTarget will have no liability to Customer for any unavailability of any Third-Party Services, or any Third-Party Provider's decision to discontinue, suspend or terminate any Third-Party Services. All right, title and interest in and to any Third-Party Services are and shall remain the sole property of their respective Third-Party Providers. Authorized Users may be required to accept additional terms and conditions with respect to access to and use of any such Third-Party Services.

**2.5 Order Forms.** Each Order Form is hereby incorporated into this Agreement by reference and is subject to the terms and conditions of this Agreement; *provided, however*, that in the event of a conflict with the terms contained in any Order Form, the terms contained in the body of this Agreement shall control unless express reference to the superseded term in the Agreement is set forth in the Order Form. Any terms and conditions that may be contained in any acknowledgement, invoice, purchase order or other Customer-provided form are specifically null and void.

## 3. INTELLECTUAL PROPERTY

**3.1 License Grant.** Subject to the terms and conditions of this Agreement, PreciseTarget grants to Customer a non-exclusive, non-transferable license during the term set forth on the Order Form to access and use the Services and Documentation in accordance with the terms of this Agreement and any restrictions or limitations set forth on the applicable Order Form(s), and to use and reproduce a reasonable number of copies of the Documentation solely for Customer's internal business purposes. Customer may permit any Authorized Users to access and use the features and functions of the Services as contemplated by this Agreement.

**3.2 Ownership; Limitations.** The Services, Documentation and all Intellectual Property Rights therein are the exclusive property of PreciseTarget and its suppliers. Customer agrees that it will not, and will not permit any Authorized User or other party to: (a) permit any party to access or use the Services or Documentation, other than the Authorized Users authorized under this Agreement; (b) modify, adapt, alter or translate the Services or Documentation, except as expressly allowed herein; (c) sublicense, lease, rent, loan, distribute, or otherwise transfer the Services to any third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Services or Documentation; (e) use or copy the Services or Documentation except as expressly allowed under this subsection; or (f) disclose or transmit any data contained in the Services to any individual other than an Authorized User, except as expressly allowed herein. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Services or Documentation, or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the Services.

**3.3 Reservation of Rights.** All rights in and to the Services not expressly granted to Customer in this Agreement are reserved by PreciseTarget and its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Services or any part thereof.

**3.4 Open Source Software.** Certain items of software may be provided to Customer with the Services and are subject to “open source” or “free software” licenses (“**Open Source Software**”). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of the section titled *Indemnification* or the subsection titled *License Grant*. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, PreciseTarget makes such Open Source Software, and PreciseTarget’s modifications to that Open Source Software, available by written request.

**3.5 Feedback.** Customer hereby grants to PreciseTarget a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Authorized Users, relating to the Services. PreciseTarget will not identify Customer as the source of any such feedback.

## **4. CUSTOMER DATA AND RESPONSIBILITIES**

**4.1 License; Ownership.** Customer is solely responsible for any and all obligations with respect to the accuracy, quality and legality of Customer Data. Customer will obtain all third party licenses, consents and permissions needed for PreciseTarget to use the Customer Data to provide the Services. Customer grants PreciseTarget a non-exclusive, worldwide, royalty-free and fully paid license during the Term (a) to use the Customer Data as necessary for purposes of providing and improving the Services, (b) to use the Customer trademarks, service marks, and logos as required to provide the Services, and (c) use the Customer Data in an aggregated and anonymized form to: (i) improve the Services and PreciseTarget’s related products and services; (ii) provide analytics and benchmarking services; and (iii) generate and disclose statistics regarding use of the Services, provided, however, that no Customer-only statistics will be disclosed to third parties without Customer’s consent.

**4.2 Authorized Users Access to Services.** Customer may permit any Authorized Users to access and use the features and functions of the Services as contemplated by this Agreement and the restrictions in the Order Form. User IDs cannot be shared or used by more than one Authorized User at a time. Upon written acceptance by PreciseTarget of the Order Form, PreciseTarget shall make the Service(s) available to the additional Authorized Users. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify PreciseTarget promptly of any such unauthorized use known to Customer.

**4.3 Customer Warranty.** Customer represents and warrants that any Customer Data hosted by PreciseTarget as part of the Services shall not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret; (c) be deceptive, defamatory, obscene, pornographic or unlawful; (d) contain any viruses, worms or other malicious code intended to damage PreciseTarget’s system or data; or (e) otherwise violate the rights, including any applicable privacy rights, of a third party. PreciseTarget is not obligated to back up any Customer Data; the Customer is solely responsible for creating backup copies of any Customer Data at Customer’s sole cost and expense. Customer agrees that any use of the Services contrary to or in violation of the representations and warranties of Customer in this section constitutes unauthorized and improper use of the Services.

**4.4 Customer Responsibility for Data and Security.** Customer and its Authorized Users shall have access to the Customer Data and shall be responsible for all changes to and/or deletions of Customer Data and the security of all passwords and other Access Protocols required in order to access the Services. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data.

## **5. CONFIDENTIALITY**

**5.1 Confidential Information.** During the term of this Agreement, each party (the “**Disclosing Party**”) may provide the other party (the “**Receiving Party**”) with certain information regarding the Disclosing Party’s business, technology, products, or services or other confidential or proprietary information that is marked as “confidential” or “proprietary” or which the Receiving Party should reasonably know is confidential and/or proprietary,

given the nature of information and context of disclosure (collectively, “**Confidential Information**”). For the avoidance of doubt, the Services, Documentation and all enhancements and improvements thereto will be considered Confidential Information of PreciseTarget.

**5.2 Protection of Confidential Information.** The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to Authorized Users (with respect to Customer) or to those employees who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information (with respect to PreciseTarget). In addition, the Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party’s request or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party shall provide to the Disclosing Party a written affidavit certifying compliance with this sentence.

**5.3 Exceptions.** The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

## **6. TERM AND TERMINATION**

**6.1 Term.** This Agreement remains in effect so long as any Order Form is in effect. Each Order Form remains in effect for the period of time set forth on the Order Form, or if no period of time is listed, then for a period of one (1) year (“**Initial Term**”), unless earlier terminated by either party in accordance with the section titled *Termination*. Following the Initial Term, the Order Form shall automatically renew for additional, successive periods of one (1) year (each, a “**Renewal Term**”), unless and until either party gives notice to the other party of its intent not to renew the Order Form within ninety (90) days of the end of the Initial Term or then-current Renewal Term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “**Term**”.

**6.2 Termination.** Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach. In addition, PreciseTarget may terminate this Agreement upon written notice to Customer if Customer becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, or liquidation for the benefit of creditors.

**6.3 Effect of Termination.** Upon termination of this Agreement for any reason: (a) all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate; and (b) within ten (10) days after the effective date of termination, each party shall comply with the obligations to return all Confidential Information of the other party, as set forth in the section titled *Confidentiality*. The sections and subsections titled *Definitions, Limitations, Ownership, Feedback, Disclaimer of Warranties, Limitation of Liability, Confidentiality, Indemnification, Effect of Termination, and Miscellaneous* will survive expiration or termination of this Agreement for any reason.

**7. FEES.** Customer agrees to pay to PreciseTarget the fees for the Services ordered, unless otherwise set forth on an Order Form (“**Fees**”). PreciseTarget reserves the right to modify the Fees payable hereunder upon written notice to Customer at least thirty (30) days prior to the end of the then-current term. All Fees for Services are due and payable in US dollars and are non-refundable. Late payments will accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower. In addition to the Fees, Customer agrees to pay, and to indemnify and hold PreciseTarget harmless from, any sales, use, excise, import or export, value added or similar tax or duty not based on PreciseTarget’s net income, including any penalties and interest, as well as any costs associated with the collection or withholding thereof, and all governmental permit

fees, license fees and customs and similar fees levied upon delivery of the Services or Documentation which PreciseTarget may incur in connection with this Agreement.

**8. WARRANTIES AND DISCLAIMERS.** PreciseTarget represents and warrants that it will provide the Services and perform its other obligations under this Agreement in a professional and workmanlike manner substantially consistent with general industry standards. Provided that Customer notifies PreciseTarget in writing of the breach within thirty (30) days following performance of the defective Services, specifying the breach in reasonable detail, PreciseTarget will, as Customer's sole and exclusive remedy, for any breach of the foregoing, re-perform the Services which gave rise to the breach or, at PreciseTarget's option, refund the fees paid by Customer for the Services which gave rise to the breach. EXCEPT FOR THE FOREGOING WARRANTY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SERVICES AND ALL OTHER DOCUMENTATION AND MATERIALS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE. CUSTOMER ACCESS AND USES THE SERVICES AT ITS OWN RISK.

## **9. LIMITATION OF LIABILITY**

**9.1 Types of Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PRECISETARGET, NOR ANY OF ITS AFFILIATES, SUBCONTRACTORS, LICENSORS, VENDORS, SUPPLIERS OR RESELLERS, NOR ANY OF ITS THIRD PARTY PARTNERS, BE LIABLE TO CUSTOMER OR ANY OTHER THIRD PARTY FOR LOST REVENUES, LOST PROFITS OR OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, RELIANCE OR EXEMPLARY DAMAGES ARISING FROM CUSTOMER'S OR ANY OTHER THIRD PARTY'S USE OF OR INABILITY TO USE THE SERVICES INCLUDING, BUT NOT LIMITED TO, LOSS OF TECHNOLOGY, LOSS OF DATA OR INTERRUPTION OR LOSS OF USE DAMAGES WHETHER OR NOT PRECISETARGET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

**9.2 Amount of Damages.** THE MAXIMUM AGGREGATE LIABILITY OF PRECISETARGET, ITS LICENSORS, VENDORS AND RESELLERS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), SHALL NOT EXCEED THE ACTUAL FEES PAID BY CUSTOMER FOR THE SERVICE FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE INITIAL EVENT GIVING RISE TO LIABILITY HEREUNDER, LESS ANY DAMAGES PREVIOUSLY PAID BY PRECISETARGET TO CUSTOMER IN THAT SIX (6) MONTH PERIOD.

**9.3 Basis of the Bargain.** The parties agree that the limitations of liability set forth in this section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

## **10. INDEMNIFICATION**

**10.1 By PreciseTarget.** PreciseTarget will defend at its expense any suit brought against Customer, and will pay any settlement PreciseTarget makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Services misappropriates any trade secret recognized under the Uniform Trade Secrets Act or infringes any copyright or United States patent issued as of the date Customer accepts this Agreement. If any portion of the Services becomes, or in PreciseTarget's opinion is likely to become, the subject of a claim of infringement, PreciseTarget may, at PreciseTarget's option: (a) procure for Customer the right to continue using the Services; (b) replace the Services with non-infringing software which does not materially impair the functionality of the Services; (c) modify the Services so that it becomes non-infringing; or (d) terminate this Agreement and refund to Customer the pro-rated portion of any prepaid fees attributable to any unused Services, and upon such termination, Customer will immediately cease all use of the Services. Notwithstanding the foregoing, PreciseTarget shall have no obligation under this section or otherwise with respect to any infringement claim based upon (i) any Customer Data; (ii) any use of the Services not in accordance with this Agreement or Documentation; (iii) any combination of the Services with other products, equipment, software or data not supplied by PreciseTarget; or (iv) any modification of the Services by any person other than PreciseTarget or its authorized agents (the "**Exclusions**"). This subsection states the sole and exclusive remedy of Customer and the entire liability of PreciseTarget, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.

**10.2 By Customer.** Customer will indemnify, defend and hold harmless PreciseTarget, its officers, directors, affiliates, subsidiaries, licensors, agents and employees (each a “**PreciseTarget Party**”) harmless from and against any and all losses, damages, liability, costs and expenses awarded by a court or agreed upon in settlement, as well as all reasonable and related attorneys’ fees and court costs arising out of or relating to: (i) an Exclusion; (ii) Customer’s (and any of Customer’s Authorized Users’) breach or alleged breach of the subsection titled *Customer Warranty*; or (iii) the use, transmission, access, disclosure or other processing of Customer Data.

**10.3 Procedure.** The indemnifying party’s obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

## 11. MISCELLANEOUS

**11.1 Compliance with Laws.** Customer shall comply with all laws, regulations, rules, ordinances and orders applicable to its access to and use of the Services. Without limiting the foregoing, Customer shall comply with the relevant export administration and control laws and regulations, as may be amended from time to time, including, without limitation, the United States Export Administration Act, to ensure that the Services are not transferred or exported (directly or indirectly) in violation of U.S. law.

**11.2 Assignment.** Customer may not assign or delegate, directly or indirectly, by operation of law, change of control or otherwise, this Agreement or any of its rights or obligations under this Agreement to any third party, and any attempt to do so will be void and of no effect.

**11.3 Governing Law and Venue.** This Agreement will be subject to and governed by the laws of the State of Maryland, without regard to conflicts of laws principles. For any litigation arising from or related to this Agreement, the parties hereby consent to the exclusive jurisdiction of and venue in the state and federal courts located in Montgomery County, Maryland.

**11.4 Government End Users.** The Services are a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Services with only those rights set forth therein.

**11.5 Export.** Customer agrees not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from PreciseTarget, or any products utilizing such data, in violation of the United States export laws or regulations.

**11.6 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Without limiting the generality of the foregoing, Customer agrees that the section titled *Limitation of Liability* will remain in effect notwithstanding the unenforceability of any provision in the subsection titled *Limited Warranty*.

**11.7 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**11.8 Remedies.** Except as provided in the sections titled *Limited Warranty* and *Indemnification*, the parties’ rights and remedies under this Agreement are cumulative. Customer acknowledges that the Services contain valuable trade secrets and proprietary information of PreciseTarget, that any actual or threatened breach of the sections titled *Intellectual Property* or *Confidentiality* or any other breach by Customer of its obligations with respect to Intellectual Property Rights of PreciseTarget will constitute immediate, irreparable harm to PreciseTarget for which monetary damages would be an inadequate remedy. In such case, PreciseTarget will be entitled to immediate injunctive relief without the requirement of posting bond, including an order that any Services, or any portions thereof, that Customer attempts to import into any country or territory be seized, impounded and destroyed by customs officials. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys’ fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**11.9 Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

**11.10 Independent Contractors.** Customer's relationship to PreciseTarget is that of an independent contractor, and neither party is an agent or partner of the other. Customer will not have, and will not represent to any third party that it has, any authority to act on behalf of PreciseTarget.

**11.11 Notices.** All notices or other communications required or permitted under this Agreement will be made in writing to the other party by electronic mail as follows: If to PreciseTarget, marketing@precisetarget.com and if to Customer, at the email address provided to PreciseTarget upon registration. Notwithstanding the foregoing, all legal notices will be made in writing to the other party as follows: If to PreciseTarget, 7201 Wisconsin Avenue, Suite 650, Bethesda, Maryland 20814, and if to Customer, at the address provided to PreciseTarget upon registration. Such notices will be delivered by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by electronic mail, any such notice will be considered to have been given on the day such electronic mail was sent. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its contact information for receipt of notice by giving notice of such change to the other party.

**11.12 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

**11.13 Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Customer and PreciseTarget.